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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/715,929
Filing Date: November 17, 2000
Appellant(s): BEZOS ET AL.

MAILED

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GROUP 3600

David Weiss (Reg. No. 41,371)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 17, 2006 appealing from the Office action mailed March 20, 2006 and the Board remand dated December 1, 2008.

Art Unit: 3692

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application Number 09/715,850

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

A new ground of rejection under 35 U.S.C. § 101 has been added.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Art Unit: 3692

Claims 1-11 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A claimed process is eligible for patent protection under 35 U.S.C. § 101 if:

"(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See Benson, 409 U.S. at 70 ('Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines. '); Diehr, 450 U.S. at 192 (holding that use of mathematical formula in process 'transforming or reducing an article to a different state or thing' constitutes patent-eligible subject matter); see also Flook, 437 U.S. at 589 n.9 ('An argument can be made [that the Supreme] Court has only recognized a process as within the statutory definition when it either was tied to a particular apparatus or operated to change materials to a 'different state or thing' '); Cochrane v. Deener, 94 U.S. 780, 788 (1876) ('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').⁷ A claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (*In re Bilski*, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008))

Claims 1-11 and 19 are not tied to a particular machine or apparatus nor do they transform a particular article into a different state or thing; therefore, claims 1-11 and 19 are non-statutory under § 101. It is also noted that the mere recitation of a machine in the preamble with an absence of a machine in the body of a claim fails to make the

Art Unit: 3692

claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals

Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495),

<http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf> .

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(a1) "Home, Netscape, Yahoo! Veterans Announce Epinions.com." PR Newswire, page 8921, July 12, 1999.

(b1) "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions." PR Newswire, page 2829, September 8, 1999.

(c1) Barrett, Alexandra. "What's Your Epinion?" Network World, page NA, September 13, 1999.

(d1) Tedeschi, Bob. "Consumer Products are Being Reviewed on More Web Sites, Some Featuring Comments From Anyone With an Opinion." (Full Text Version) New York Times, Late Edition - Final ED, col. 1, page 16, October 25, 1999.

(e1) Wohl, Amy. "User Review - Your Opinions Are Highly Valued on the Web." VarBusiness, no. 1528, page 69, November 8, 1999.

(a2) "eBay Launches the Most Comprehensive Trust and Safety Upgrades to the World's Largest Person-to-Person Trading Site." PR Newswire, January 15, 1999.

(b2) Lenatti, Chuck. "Auction Mania." Upside, vol. 11, no. 7, pages 84-92, July 1999.

(c2) eBay's Feedback Forum web site, archived on October 12, 1999 by
web.archive.org [URL:
<http://web.archive.org/web/19991012065814/pages.ebay.com/...>].

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A claimed process is eligible for patent protection under 35 U.S.C. § 101

if:

"(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See Benson, 409 U.S. at 70 ('Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines. '); Diehr, 450 U.S. at 192 (holding that use of mathematical formula in process 'transforming or reducing an article to a different state or thing' constitutes patent-eligible subject matter); see also Flook, 437 U.S. at 589 n.9 ('An argument can be made [that the Supreme] Court has only recognized a process as within the statutory definition when it either was tied to a particular apparatus or operated to change materials to a 'different state or thing' '); Cochrane v. Deener, 94 U.S. 780, 788 (1876) ('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').⁷ A claimed process involving a fundamental

Art Unit: 3692

principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (*In re Bilski*, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008))

Claims 1-11 and 19 are not tied to a particular machine or apparatus nor do they transform a particular article into a different state or thing; therefore, claims 1-11 and 19 are non-statutory under § 101. It is also noted that the mere recitation of a machine in the preamble with an absence of a machine in the body of a claim fails to make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495), <http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf>.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Epinions.com**, as disclosed in:

(a1) "Home, Netscape, Yahoo! Veterans Announce Epinions.com" (July 12, 1999),

(b1) "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions" (September 8, 1999),

(c1) Barrett, "What's Your Epinion?" (September 13, 1999),

(d1) Tedeschi, "Consumer Products are Being Reviewed on More Web Sites, Some Featuring Comments From Anyone With an Opinion" (October 25, 1999),
and

(e1) Wohl, "User Review - Your Opinions are Highly Valued on the Web" (November 8, 1999)

in view of eBay, as disclosed in:

(a2) "eBay Launches the Most Comprehensive Trust and Safety Upgrades to the World's Largest Person-to-Person Trading Site" (January 15, 1999),

(b2) Lenatti, "Auction Mania" (July 1999), and

(c2) eBay's Feedback Forum web site, archived on October 12, 1999 by web.archive.org [URL:

<http://web.archive.org/web/19991012065814/pages.ebay.com/...>].

Please note that the cited references provide evidence that Epinions.com was founded in April 1999, the features of Epinions.com were made public as early as July 12, 1999, and the actual web site was officially launched on September 8, 1999. The cited references also provide evidence that eBay's Feedback Forum features were made public as early as January 15, 1999.

Epinions.com discloses a method of evaluating a product review displayed in connection with a networked commerce site, comprising:

[Claim 1] providing a product review authored by a first customer over a network to a plurality of other customers ("Home, Netscape, Yahoo! Veterans Announce Epinions.com": ¶ 4; "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶ 2);

receiving votes over the network from other customers indicating whether the product review was helpful ("Home, Netscape, Yahoo! Veterans Announce Epinions.com": ¶¶ 4, 7; "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶¶ 2, 4);

[Claim 2] wherein the votes comprise votes indicating that the product review is helpful and votes indicating that the product review is not helpful ("Home, Netscape, Yahoo! Veterans Announce Epinions.com": ¶ 4; "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶¶ 2, 4, 7; Tedeschi: abstract).

As per claim 1, Epinions.com does not expressly teach the steps of tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review, providing over the network an indication related to the vote tally for the product review in association with the product review, assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer, and displaying the

Art Unit: 3692

designation in association with the product review. However, eBay discloses that a seller's reputation is affected by how buyers (or other eBay members) rate him/her ("eBay Launches the Most Comprehensive Trust and Safety Upgrades to the World's Largest Person-to-Person Trading Site": ¶¶ 8, 10; eBay's Feedback Forum web site: Page 1). These ratings are compiled to give each seller an overall rating while the feedback profile indicates how many ratings were positive, negative, and neutral (Lenatti: ¶¶ 19, 45; eBay's Feedback Forum web site: Pages 1, 3, 8 -- A total accumulated rating is displayed and the member's Feedback Profile can be accessed to view any negative remarks). The feedback profile information is displayed on the eBay web site, thereby providing an indication relating to the vote tally for each seller (Lenatti: ¶¶ 19, 45; eBay's Feedback Forum web site: Pages 1, 3, 8). eBay's Feedback Forum serves as a safety mechanism for its online transactions by allowing various eBay members to establish trust levels based on community ratings (Lenatti: ¶ 18). While eBay's Feedback Forum focuses on ratings of the buyers' and sellers' performances related to a transaction (as opposed to Epinions.com, which rates the opinions of its members), both online communities rely on establishing trust among its members based on community ratings (e.g., see all of "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions"). Consequently, the Examiner asserts that eBay's Feedback Forum provides a solution that is reasonably pertinent to the problem at hand in Epinions.com, i.e., promoting trust among the members of its online community; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to

Art Unit: 3692

modify Epinions.com to perform the steps of tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review, providing over the network an indication related to the vote tally for the product review in association with the product review, assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer, and displaying the designation in association with the product review in order to further promote a sense of trust among Epinions.com's members by more precisely conveying feedback regarding past experiences with a particular member of the Epinions.com community.

[Claim 3] Regarding claim 3, Epinions.com does not expressly teach that the helpful votes are weighted differently than non-helpful votes; however, eBay assigns a score of +1 to a positive rating, -1 to a negative rating, and 0 to a neutral rating (eBay's Feedback Forum web site: Page 1), which effectively means that the positive (i.e., helpful) votes are weighted differently than the negative (i.e., non-helpful) votes. For the reasons discussed above, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Epinions.com to weight helpful votes differently than non-helpful votes (as taught by eBay) in order to further promote a sense of trust among Epinions.com's members by more precisely conveying feedback regarding past experiences with a particular member of the Epinions.com community.

[Claims 4-7] Regarding claims 4-7, neither Epinions.com nor eBay expressly teaches that a customer is ranked based on his/her reviews and a corresponding vote tally of

Art Unit: 3692

helpful and unhelpful votes or that a customer is rewarded at least partly in response to the first customer achieving a first ranking. eBay does however display a star icon corresponding to an overall feedback rating, which is based on a tally of helpful and unhelpful votes (eBay's Feedback Forum web site: Pages 1, 3). Furthermore, Official Notice is taken that it is old and well-known in the art to rank items being compared to one another. Ranking items facilitates a quick comparison of the pros and cons (or other aspects of interest) of a group of items being compared. Since both Epinions.com and eBay encourage their members to provide more reliable and trustworthy service to one another, the members are effectively competing against one another to become featured reviewers or gain a more stellar reputation (i.e., a reputation that stands out compared to other members). Consequently, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the Epinions.com-eBay combination to perform the steps of displaying a ranking in association with a plurality of the first customer's reviews, wherein the ranking is based at least in part on the vote tally (claim 4), wherein the ranking is determined by the number of helpful and unhelpful votes received for one or more of the first customer's reviews (claim 5) in order to facilitate the selection of a member(s), based on a quick assessment of which members are the most highly rated and reputable within the community. Furthermore, as per claim 6, the rank of a member/customer would intrinsically provide a reward to the member/customer, especially if a member/customer is ranked highly and therefore presented as one of the more highly rated members of the trusted community. Additionally, eBay displays next to each member's Feedback

Art Unit: 3692

Profile a star whose color corresponds to an overall rating (eBay's Feedback Forum web site: Pages 1, 3). The attainment of a "Shooting Star" would effectively denote a highest possible ranking; therefore, the star in and of itself is a reward for one's ranking. Consequently, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Epinions.com to reward the first customer at least partly in response to the first customer achieving a first ranking (claim 6) in order to further promote a sense of trust among Epinions.com's members by more precisely conveying feedback regarding past experiences with a particular member of the Epinions.com community. This display of a color-coded star is indicative of the step of displaying the designation in association with a plurality of reviews authored by the first customer (claim 7).

[Claim 8] Epinions.com tallies votes from other customers regarding a product review, thereby implying that Epinions.com's vote tallies are limited to those who did not author the original product review ("Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions": ¶ 2); however, Epinions.com does not expressly teach that the first customer is actively prevented from voting on his/her own product review. Nevertheless, the Examiner asserts that Epinions.com would work against its own goal of providing consumers with unbiased opinions if it allowed first customers to rate their own product reviews. For example, Epinions.com touts that "consumers can rely on Epinions.com to offer brutally honest, relevant, and unbiased epinions. In order to maintain objectivity, Epinions.com does not create its own editorial content and the company does not sell products." ("Epinions.com

Art Unit: 3692

Announces the Launch of its Free Online Shopping Guide Powered by Consumer

Opinions": ¶ 2) Furthermore, Epinions.com monetarily compensates its more popular

reviewers, as judged by ratings of the usefulness of the reviews; therefore,

Epinions.com is clearly trying to encourage reviewers to submit reviews that are

generally useful to the Epinions community as a whole and Epinions.com has a vested

interest in doing so, especially since financial compensation is provided. Also,

Official Notice is taken that it is old and well-known in the art of voting to prevent a

subject of the vote from participating in the actual vote tally in order to prevent the

subject of the vote from unfairly skewing the voting results in his/her favor.

Epinions.com is concerned with promoting reviewers that truly meet the needs of the

Epinions community as a whole; therefore, the Examiner asserts that it would have

been obvious to one of ordinary skill in the art at the time of Applicant's invention to

adapt Epinions.com to prevent a vote on the product review from the first customer from

being included in a tally of votes received for the product review in order to prevent the

first customer from unfairly skewing the voting results in his/her favor while ignoring the

general consensus of the Epinions community as a whole.

[Claim 9] Epinions.com tallies votes from other customers regarding a product

review; however, Epinions.com does not expressly teach that each of the other

customers is prevented from voting more than once in relation to the product review.

However, the Examiner submits that it is old and well-known in the art of voting to only

accept one vote from each eligible voter, as evidenced by eBay (eBay's Feedback

Forum web site: Page 1 -- "You can leave multiple comments in someone's Feedback

Profile, but they'll only count once (+1). This makes the system fair. No one can 'tip the scales' in either feedback direction, positive or negative"). In other words, this helps to ensure that each voter has no more and no less than his/her fair representation in the vote, thereby reducing the likelihood of skewing voting results in favor of the opinion of a single individual or limited group of individuals. Epinions.com promotes the formation of a community of trust in which reviewers whose opinions are more highly respected by a greater number of fellow community members are granted premier reviewer status; therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Epinions.com such that each of the other customers is prevented from voting more than once in relation to the product review in order to help ensure that each customer has no more and no less than his/her fair representation in the vote, thereby reducing the likelihood of skewing voting results in favor of the opinion of a single individual or limited group of individuals and increasing the likelihood of more accurately representing the opinions of the Epinions.com community as a whole.

[Claims 10, 11] Epinions.com does not expressly teach the steps of generating a profile page associated with the first customer, wherein the profile page includes an indication related to the number of helpful votes the first customer has received for a plurality of reviews authored by the customer (claim 10) and generating a profile page associated with the first customer, wherein the profile page includes the number of unhelpful votes the first customer has received (claim 11). However, eBay makes up for these deficiencies (see eBay's Feedback Forum web site: Pages 1, 3, 8). Again, while

Art Unit: 3692

eBay's Feedback Forum focuses on ratings of the buyers' and sellers' performances related to a transaction (as opposed to Epinions.com, which rates the opinions of its members), both online communities rely on establishing trust among its members based on community ratings (e.g., see all of "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions"). Consequently, the Examiner asserts that eBay's Feedback Forum provides a solution that is reasonably pertinent to the problem at hand in Epinions.com, i.e., promoting trust among the members of its online community; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Epinions.com to perform the steps of generating a profile page associated with the first customer, wherein the profile page includes an indication related to the number of helpful votes the first customer has received for a plurality of reviews authored by the customer (claim 10) and generating a profile page associated with the first customer, wherein the profile page includes the number of unhelpful votes the first customer has received (claim 11) in order to further promote a sense of trust among Epinions.com's members by more precisely conveying feedback regarding past experiences with a particular member of the Epinions.com community.

[Claim 19] Claim 19 recites limitations already addressed by the rejection of claims 1-11 above; therefore, the same rejection applies.

Even though not presented for appeal by the Appellant, it should be noted that the following rejection under 35 U.S.C. § 112, 2nd remains pending:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "the providing review" in line 2. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, "the providing review" has been interpreted as "the product review."

Also noted is the issue of priority regarding claim 3.

Priority

There is no support for the concept of weighting votes in either of the provisional applications to which the instant application claims priority. The closest disclosure is found in provisional application number 60/166,547. Page 4 discusses how a "customer's level of achievement will be based on the number of useful and useless votes that his or her reviews have collectively received." The ranges assess a difference between "useful" and "useless" votes. There is no weighting expressly assigned to either type of vote; therefore, claim 3 is only granted the benefit of priority of the filing date of the instant application (i.e., November 17, 2000).

(10) Response to Argument

Appellant argues that neither Epinions nor eBay "is directed to or discloses tallying votes received for a plurality of reviews to provide a total tally" (page 8 of the Appeal Brief). As stated in the art rejection, the Examiner agrees that Epinions.com does not expressly teach the step of tallying votes received for a plurality of reviews authored by the first customer to provide a total tally. Regarding the teachings of eBay, Appellant argues that the "Feedback Forum is not used to provide product reviews, and a Feedback Profile is not displayed in conjunction with a product." (Page 9 of the Appeal Brief) Appellant continues to state, "Thus, in contrast to the claimed methods, eBay does not disclose, and is unconcerned with rating product reviews...Therefore, eBay completely fails to disclose, and is unconcerned with tallying votes for product reviews." (Page 10 of the Appeal Brief) Appellant also explicitly submits that eBay is not analogous art (page 12 of the Appeal Brief). The Examiner submits that Epinions and eBay are analogous art. MPEP § 2141(a)(R-3)(I) provides the following guidance in assessing analogous prior art:

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have

Art Unit: 3692

commended itself to an inventor's attention in considering his problem."); Wang Laboratories Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993); and State Contracting & Eng 'g Corp. v. Condotte America, Inc., 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

The art rejection explains in greater detail how Epinions.com and eBay are in analogous arts, especially since eBay's Feedback Forum provides a solution that is reasonably pertinent to the problem at hand in Epinions.com, i.e., promoting trust among the members of its online community.

While eBay's Feedback Forum focuses on ratings of the buyers' and sellers' performances related to a transaction (as opposed to Epinions.com, which rates the opinions of its members), both online communities rely on establishing trust among its members based on community ratings (e.g., see all of "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions"). Consequently, the Examiner asserts that eBay's Feedback Forum provides a solution that is reasonably pertinent to the problem at hand in Epinions.com, i.e., promoting trust among the members of its online community.

The recent decision in *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 80 USPQ2d 1641 (Fed. Cir. 2006) further supports the Examiner's position that motivation to combine references may be found "from the nature of the problem to be solved, leading inventors to look to references relating to possible solutions to that problem" (page 1649 of the *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.* decision, citing *Ruiz v. A.B. Chance Co.*, 234 F.3d 654 [57 USPQ2d 1161])

Art Unit: 3692

(*Fed. Cir. 2000*)). Both Epinions.com and eBay thrive on establishing communities of trust and eBay provides a trust-increasing solution that is reasonably pertinent to bolstering trust in the Epinions community.

Appellant argues, "The Examiner does not point to any disclosure of such [vote tallying] functionality in eBay, and does not explain how or why the addition of eBay's tallying of ratings of buyers or sellers with respect to eBay transactions to Epinions would have provided such functionality." (Page 11 of the Appeal Brief) The Examiner respectfully disagrees. The art rejection addresses the vote tallying features of eBay as follows:

...eBay discloses that a seller's reputation is affected by how buyers (or other eBay members) rate him/her ("eBay Launches the Most Comprehensive Trust and Safety Upgrades to the World's Largest Person-to-Person Trading Site": ¶¶ 8, 10; eBay's Feedback Forum web site: Page 1). These ratings are compiled to give each seller an overall rating while the feedback profile indicates how many ratings were positive, negative, and neutral (Lenatti: ¶¶ 19, 45; eBay's Feedback Forum web site: Pages 1, 3, 8 -- A total accumulated rating is displayed and the member's Feedback Profile can be accessed to view any negative remarks). The feedback profile information is displayed on the eBay web site, thereby providing an indication relating to the vote tally for each seller (Lenatti: ¶¶ 19, 45; eBay's Feedback Forum web site: Pages 1, 3, 8). eBay's Feedback Forum serves as a safety mechanism for its online transactions by allowing various eBay members to establish trust levels based on community ratings (Lenatti: ¶ 18). While eBay's Feedback Forum focuses on ratings of the buyers' and sellers' performances related to a transaction (as opposed to Epinions.com, which rates the opinions of its members), both online communities rely on establishing trust among its members based on community ratings (e.g., see all of "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions"). Consequently, the Examiner asserts that eBay's Feedback

Art Unit: 3692

Forum provides a solution that is reasonably pertinent to the problem at hand in Epinions.com, i.e., promoting trust among the members of its online community; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Epinions.com to perform the steps of tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review, providing over the network an indication related to the vote tally for the product review in association with the product review, assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer, and displaying the designation in association with the product review in order to further promote a sense of trust among Epinions.com's members by more precisely conveying feedback regarding past experiences with a particular member of the Epinions.com community.

eBay's buyers rate each seller and these ratings (both negative and positive) are compiled to form an overall seller rating, thereby generally addressing the claimed concept of providing a total vote tally. As explained further in the rejection, Epinions' users rate the usefulness of product reviews of other users. A fair reading of eBay yields the general understanding that a tally of opinions or votes gives a good overview of opinions as a whole. For example, such a tally could reveal that most buyers tend to be content with seller A or most buyers tend to have problems with seller B. Already reiterated is the fact that both Epinions.com's and eBay's success lies in establishing trust among users in their respective online communities. Therefore, the Examiner maintains that a fair reading of eBay's teachings as applied to Epinions.com would have suggested to one of ordinary skill in the art at the time of Appellant's invention the obvious combination of the teachings of Epinions.com and eBay to modify

Art Unit: 3692

Epinions.com's ratings of product review usefulness to generate an overall vote tally in order to give a good overview of each product review's usefulness as a whole. In other words, trends of usefulness or non-usefulness depict a more accurate overview of opinions since one negative review out of many more positive ones would not significantly skew the reputation of a user based on satisfaction with his/her selling practices (as seen in eBay) or his/her product reviews (as seen in Epinions.com).

Additionally, Appellant argues that "even if Epinions were modified to include the star icon of eBay, which indicates the number and types of comments received regarding a purchase/sale transaction, the combination would not assign a designation to a first customer based on the total vote tally for the plurality of reviews authored by the first customer, and would not display the designation in association with a product review." (Page 11 of the Appeal Brief) Again, the Examiner submits that a fair reading of the general teachings (e.g., the aspects of vote tallying and displaying designations of users based on a total vote tally) of eBay as opposed to very limited readings of the specific embodiments of eBay is what should be taken from the eBay references. As explained above in the arguments and in the art rejection, eBay and Epinions.com are in analogous arts. The art rejection clearly sets forth some parallelisms between the functionality in eBay and respective functionality in Epinions.com. The Examiner has clearly set forth the analogy between eBay's ratings of sellers and Epinions.com's ratings of the usefulness of users' product reviews; therefore, applying a parallel analysis of the display of a designation of eBay's sellers based on each seller's respective total vote tally (of buyer satisfaction with each seller) would analogously

apply to displaying a designation of a user and his/her product reviews based on a total vote tally corresponding to each user and/or set of product reviews.

Regarding claim 3, Appellant argues, "While the Examiner relies on eBay to provide the missing elements, and argues that it would be obvious 'to modify Epinions.com to weight helpful votes differently than non-helpful votes (as taught by eBay),' Appellants respectfully note that eBay does not even disclose 'helpful votes' or 'non-helpful votes', much less 'helpful votes' or 'non-helpful votes' regarding a product review. Instead, eBay discloses that a buyer or seller receives a score (+1, -1, 0) depending on a comment (positive, negative, neutral) regarding an eBay transaction left about the buyer or seller by another eBay user. Thus, even if Epinions was modified to include the scoring of eBay, the result would not weight helpful votes differently than non-helpful votes." (Page 13 of the Appeal Brief) The Examiner respectfully disagrees. eBay assigns a score of +1 to a positive rating, -1 to a negative rating, and 0 to a neutral rating (eBay's Feedback Forum web site: Page 1). Lenatti explains how each seller's overall rating is a net compilation of ratings (¶¶ 19, 45). Page 1 of eBay's Feedback Forum web site states that everyone's vote will only count once. Effectively, each vote is worth one point. Each positive vote is assigned a score (or weighting) of +1 while each negative vote is assigned a score (or weighting) of -1 and each neutral vote is assigned a score (or weighting) of 0. If seller A receives 10 positive votes, 2 negative votes, and 1 neutral vote, then seller A's overall rating would be calculated using the respective weightings as follows: $(+1)(10 \text{ positive votes}) + (-1)(2 \text{ negative votes}) + (0)(1 \text{ neutral vote}) = 8$. As explained in the art rejection, analogously applying this weighting

scheme to the modified version of Epinions.com (in light of eBay) would similarly yield a weighting scheme that distinguishes between helpful and non-helpful votes.

Appellant argues that “the Examiner has failed to explain how the scoring of transaction comments of eBay would be applied to the ratings disclosed by Epinions (Epinions.com allow customers to ‘rate the usefulness of others’ epinions’) and how such modification would more precisely convey feedback regarding past experiences with a particular member of the Epinions.com community than the disclosed usefulness rating of Epinions.” (Page 13 of the Appeal Brief) Appellant again focuses on the preferred embodiments of eBay without taking into account the fair teachings of eBay as a whole. As explained above in the arguments and in the art rejection, both eBay and Epinions.com rely on establishing trust within their online communities. The functionality of eBay parallels much of that of Epinions.com; therefore, for the reasons already presented in the art rejection and in the arguments above, the Examiner submits that advantageous features of eBay that enhance eBay functionality, especially eBay functionality paralleling functionality of Epinions.com would have been obvious to apply to Epinions.com’s parallel functionality to reap similar benefits in Epinions as well.

Regarding claim 4, “Appellants respectfully traverse the Examiner’s assertion of Official Notice with respect to the relevant art, and note that the Examiner failed to provide any supporting documentary evidence, affidavit or declaration in support of the Official Notice. Even assuming, arguendo that the Examiner’s Official Notice is proper, it does not follow that it would be obvious to display a ranking in association with a

Art Unit: 3692

plurality of the first customer's reviews as claimed." (Page 14 of the Appeal Brief)

Examiner notes the following discussion of Official Notice taken from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Appellant has not "specifically point[ed] out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." Appellant's broad request for references to support Examiner's statements of Official Notice amounts to nothing more than an

Art Unit: 3692

unsupported challenge, which is an improper challenge. Nevertheless, Appellant appears to be addressing the following statement of Official Notice from the rejection of claim 4: Official Notice is taken that it is old and well-known in the art to rank items being compared to one another. The following prior art references support this statement of Official Notice:

Brockman et al. (U.S. Patent No. 5,826,240) -- Claim 18 of Brockman recites "means for displaying a ranking of the seller's sales performance in comparison with respective rankings of other sellers' sales performances."

Walker et al. (U.S. Patent No. 6,112,185) -- Column 11, line 65 through column 12, line 11 of Walker explain, "The specific offers retrieved during the previous step are then ranked during step 1015 in accordance with seller-defined criteria. As previously indicated, the automated service upgrade acceptance system 100 can enhance the value of offers in accordance with seller-defined criteria for preferred customers, such as frequent flyers, or in accordance with a promotional offer. The offer evaluation subroutine 1000 then compares the ranked offers during step 1020 to the offer rules stored in the offer rules database 700 and sets the status in the reservation database 500 of any offers which fail to meet the seller-defined minimum offer requirements to "rejected." The current upgrade offer item is then accepted for the remaining highest-ranking offers to the extent of the availability identified during step 1005."

As per the rejection of claim 4, Appellant argues that "eBay does not appear to state or imply that members should compete with respect to their reputations. Indeed, rather than encouraging competition with respect to reputation, eBay discloses

Art Unit: 3692

encouraging the eBay community 'to think that basically 99 percent of the people out there are doing the right there.'" (Pages 14-15 of the Appeal Brief). The Examiner respectfully disagrees with Appellant's reasoning. Page 1 of eBay's Feedback Forum web site specifically says, "The more positive feedback you receive, the more stellar your reputation becomes!" Clearly, eBay is encouraging sellers to work for higher ratings and a better reputation, thereby promoting trust within the online community.

Regarding claim 6, Appellant states, "Even assuming, *arguendo*, Epinions were modified to include the purported 'reward' of eBay, the Examiner has failed to explain how rewarding a first customer would more precisely convey feedback regarding past experiences with a particular member of the Epinions.com community, as argued by the Examiner, than the disclosed usefulness rating of Epinions." (Page 15 of the Appeal Brief) The art rejection explains that the stars are color-coded to represent an overall rating (eBay's Feedback Forum web site: pages 1, 3). It is notoriously old and well-known in the art of displays that color-coded visuals help to attract attention and convey information more efficiently and succinctly, thereby supporting the Examiner's assertion that such a display would more precisely convey feedback regarding past experiences.

As per claim 7, Appellant argues that "because eBay does not teach or suggest product reviews, rating product reviews, or providing a customer with designation based on product review ratings, let alone displaying such a designation in association with a plurality of reviews, there is no explicit or implicit suggestion or motivation to combine the eBay with Epinions." (Page 16 of the Appeal Brief) The Examiner has already explained above in the art rejection and in the aforementioned arguments where she

Art Unit: 3692

has found support for combining the teachings of eBay with those of Epinions, thereby addressing the limitation of claim 7 as well.

Regarding claim 8, Appellant asserts that "the Epinions articles and eBay do not even mention, and do not appear to recognize or be concerned with any problems associated with a customer who would unfairly skew review voting results in the customer's favor." (Page 16 of the Appeal Brief) The motivation to combine references does not have to be found in the base reference (i.e., Epinions). In response to Appellant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner explained (in the art rejection) that Epinions.com is trying to encourage the submission of honest, unbiased product reviews. In combination with the old and well-known knowledge generally available to skilled artisans in the art of voting, the Examiner submitted that Epinions.com's goal would be more easily attainable by preventing reviewers from voting for themselves since such reviews would likely be biased and skew the results and integrity of Epinion.com's online community ratings. Similarly, regarding claim 9, eBay addresses the importance of preventing a user from voting multiple times to discourage skewing of the results (eBay's Feedback Forum web site: page 1). In a

Art Unit: 3692

trusted community (such as the ones established by Epinions.com and eBay), the integrity of the online community ratings are preserved when results are honest and accurate (and not skewed by "one person '[tipping] the scales' in either feedback direction, positive or negative" (as stated on page 1 of eBay's Feedback Forum web site)).

Appellant refers to the arguments of claim 3 when discussing claim 11. The Examiner's response to the arguments of claim 3 applies to claim 11 as well.

Appellant refers to the arguments of claim 1 when discussing claim 19. The Examiner's response to the arguments of claim 1 applies to claim 19 as well.

Furthermore, it should be noted that independent claim 19 is significantly broader in scope than independent claim 1. For example, unlike claim 1, claim 19 does not require that communications be conducted via a network. Claim 19 does not recite a tally of votes *per se* nor does claim 19 require a designation to a customer based on the total vote tally and display of the designation in association with a product review.

In conclusion, Appellant's arguments are non-persuasive.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer

Art Unit: 3692

exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.


Respectfully submitted,

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692

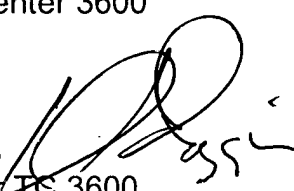
Art Unit: 3692

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Conferees:


Kambiz Abdi
Supervisory Patent Examiner
Art Unit 3692


Vincent Millin
Appeal Conference Specialist
Technology Center 3600


Wynn Coggins
Group Director TC 3600